

4.0 Attorney General's Statement

## ATTORNEY GENERAL'S STATEMENT

I hereby certify, pursuant to Section 402(b) of the Federal Water Pollution Control Act, as amended (33 U.S.C. 1251, et seq.), that in my opinion the laws of the State of Ohio provide adequate authority to carry out the program set forth in the "Program Description" submitted by the Ohio Environmental Protection Agency. The specific authorities provided, which are contained in lawfully enacted or promulgated statutes or regulations in full force and effect on the date of this Statement, include the following:

### 1. Authority to Issue Permits.

#### a. Existing and new point sources.

State law provides authority to issue permits for the discharge of pollutants by existing and new point sources to the same extent as required under the permit program administered by the U.S. Environmental Protection Agency ("EPA") pursuant to Section 402 of the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq. (hereinafter "the FWPCA" or "the Act"). [Federal Authority: FWPCA Sections 301(a), 402(a) (1), 402(b) (1) (A); 40 C.F.R. Section 124.10.]

#### State Statutory or Regulatory Authority:

Ohio Revised Code Section 6111.03(J) (hereinafter cited as O.R.C.)

O.R.C. Section 6111.03(P)

Regulation EP-31-02

#### Remarks of the Attorney General:

Pursuant to Section 6111.03(J), the Director of the Ohio Environmental Protection (hereinafter referred to as OEPA) may:

(J) Issue, revoke, modify, or deny permits for the discharge of sewage, industrial waste, or other wastes into the waters of the state, and for the installation or modification of disposal systems or any part thereof in compliance with all requirements of the "Federal Water Pollution Control Act Amendments of 1972," 86 Stat. 816, 33 U.S.C.A. 1251 and mandatory regulations adopted thereunder. . . .

In addition, the definition of "waters of the state" in O.R.C. Section 6111.01(H) includes all "navigable waters" as that term was interpreted by the EPA on page 4 of the General Instructions to Attorneys General preparing Appendix A Statements.

OEPA Regulation EP-31-02 requires that any person who discharges or allows a discharge of pollutants into the waters of the state must have an Ohio NPDES permit. Certain discharges are exempted by O.R.C. Section 6111.04, but only where a permit is not required by a regulation of the EPA. The sections quoted above authorize a permit program which, in my opinion, is at least as comprehensive as the permit system administered by the EPA pursuant to the FWPCA for new and existing point sources.

b. Disposal into wells.

State law provides authority to issue permits to control the disposal of pollutants into wells. [Federal Authority: FWPCA §402(b)(1)(D); 40 C.F.R. §124.80.]

State Statutory and Regulatory Authority:

O.R.C. Section 6111.03(J)  
O.R.C. Section 6111.04

Remarks of the Attorney General:

The Director of the OEPA is given the power to issue a permit for disposal of pollutants into wells by O.R.C. Section 6111.03(J) which provides that the Director may:

(J) Issue, revoke, modify, or deny permits for the discharge of sewage, industrial waste, or other wastes into the waters of the state,

No person shall cause pollution or place or cause to be placed any sewage, industrial waste, or other wastes in a location where they cause pollution of any waters of the state ... except in such cases where the director of environmental protection has issued a valid and unexpired permit ...

. . . .

No person who is discharging or causing the discharge of any sewage, industrial waste, or other wastes into the waters of the state shall continue or cause the continuance of such discharge without first obtaining a permit . . . .

"Waters of the state", as used in this section, is defined in O.R.C. Section 6111.01(H) to include wells.

40 C.F.R. §124.80(c) requires that any permit issued for the disposal of pollutants into wells shall be issued in accordance with procedures and requirements for NPDES permits. Among the requirements for the issuance of a permit for the disposal of pollutants into wells is that of notice and public participation in the permit program. Both O.R.C. Section 6111.03(J) and O.R.C. Section 6111.04(B) require the State of Ohio to issue permits designed to comply with the regulations promulgated by the EPA pursuant to the FWPCA. Therefore, the State of Ohio must conform to the public participation procedures set forth in subpart (D) of 40 C.F.R. Part 124. The procedures which assure public participation in applications for a permit for disposal into wells are detailed under the Attorney General's remarks in authorities 8 and 9 of this certification.

Remarks of the Attorney General:

1. Effluent limitations pursuant to Section 301.

The OEPA has the authority to apply effluent standards which specify the amount of constituents permitted in individual wastewater discharges pursuant to O.R.C. Section 6111.03(J). That section states, inter alia:

The director shall specify in permits for the discharge of sewage, industrial waste, and other waste, the net volume net weight, duration, frequency and, where necessary, concentration of such sewage, industrial waste, and other wastes which may be discharged into the waters of the State.

"Net" is the substantial equivalent to "total", as used in 40 C.F.R. Part 124.

O.R.C. Section 6111.03(P) authorizes the Ohio program to be administered consistent with the Federal administration of the FWPCA and this interpretation is consistent with the Federal interpretation.

The Director may apply Federal effluent standards and limitations without further administrative rule-making at the State level. In accordance with O.R.C. Section 6111.03(J), the Director of the OEPA may grant a permit which is:

. . . in compliance with all requirements of the "Federal Water Pollution Control Act Amendments of 1972," . . . and mandatory regulations adopted thereunder, and set terms and conditions of permits, including schedules of compliance, where necessary. The terms and conditions shall be designed to achieve and maintain full compliance with the national effluent limitations, national standards of performance for new sources, and national toxic and pretreatment effluent standards set under such act, and any other mandatory requirements of such act that are imposed by regulation of the administrator of the United States Environmental Protection Agency . . . .

... setting forth and requiring compliance with national effluent limitations, national standards of performance for new sources, and national toxic and pretreatment effluent standards, as necessary in order to insure compliance with the "Federal Water Pollution Control Act Amendments of 1972," .... No person shall violate any such regulation, except in compliance with the terms and conditions of a permit issued under section 6111.03 of the Revised Code.

OEPA Regulation EP-31-04(B) permits the Director to determine levels of pollutants that may be discharged without violating applicable water quality standards or applicable effluent limitations.

2. Water quality related effluent limitations pursuant to Section 302

Pursuant to O.R.C. Section 6111.03(J), the Director may without further administrative rule-making at the State level, impose:

... as conditions of each permit, water quality related effluent limitations in accordance with sections 301 and 302 of the "Federal Water Pollution Control Act Amendments of 1972," . . . .

Section 301 of the FWPCA mandates compliance with any more stringent effluent limitations required by Federal law or regulation or by State law or regulation. The authority granted to meet the Section 301 limitations also enables the OEPA to comply with Section 304(b) and Section 307 of the FWPCA, since a provision that the discharger comply with Section 304(b) and Section 307 is included in Section 301 of the FWPCA.

The Ohio legislature has ensured that the Federal scheme be followed by requiring that permits contain terms and conditions designed:

... to achieve and maintain full compliance with the national effluent limitations, national standards of performance for new sources ... and any other mandatory requirements of such act that are imposed by regulation of the administrator of the United States Environmental Protection Agency. O.R.C. Section 6111.03(J). (emphasis added).

Compliance with national standards of performance for new sources may be had without any further administrative rule-making at the State level.

The applicable effluent limitations to be required by Regulation EP-31-04(B) include, by the definition in Regulation EP-31-01(D), standards of performance.

4. Toxic and pretreatment effluent standards pursuant to Section 307.

Section 307(a) of the FWPCA requires that the Administrator of the U.S. Environmental Protection Agency establish a list of toxic substances and promulgate regulations to establish effluent standards or prohibitions regarding these toxic substances. Section 307(b) of the FWPCA specifies that the Administrator is to promulgate regulations establishing pretreatment standards for pollutants which will enter the publicly owned treatment works and which are not susceptible to treatment by such treatment works or which would interfere with the operation of such treatment works.

- (3) To any point source, as appropriate, effluent standards or prohibitions designed to prohibit the discharge of toxic pollutants in toxic amounts or to require pretreatment of pollutants which interfere with, pass through, or otherwise are incompatible with the operation of publicly owned treatment works. [Federal Authority: FWPCA §§ 301, 304(d), 307, 402(a)(1), 402(b)(1)(A); 40 C.F.R. §124.42(a)(6).]

State Statutory and Regulatory Authority

O.R.C. Section 6111.041

O.R.C. Section 6111.03(J)

Regulation EP-31-04(B)(1)(b)

Remarks of the Attorney General:

The State is required to possess the power to fully effectuate the purposes of the FWPCA in instances where applicable effluent standards or limitations have not been promulgated by the U.S. EPA. Pursuant to O.R.C. Section 6111.041 the Director of the OEPA can adopt standards of water quality to protect the waters of the State of Ohio. To achieve and maintain the standards of water quality, the Director shall impose, pursuant to O.R.C. Section 6111.03(J):

... where necessary and appropriate, as conditions of each permit, water quality related effluent limitations in accordance with sections 301 and 302 of the "Federal Water Pollution Control Act Amendments of 1972," . . .

The State of Ohio does, therefore, possess the statutory authority to apply effluent limitations which are in accordance with Section 301 of the FWPCA, even where the U.S. EPA has not promulgated national effluent limitations.



State Statutory and Regulatory Authority:

O.R.C. Section 6111.03(J)

O.R.C. Section 6111.01(K)

Regulation EP-31-04(A)(3)

Remarks of the Attorney General:

The State possesses the authority to require compliance with applicable FWPCA deadlines since the State is authorized to set effluent limitations and standards which will comply with the deadlines set in the FWPCA.

O.R.C. Section 6111.03(J) allows the Director of the OEPA to set terms and conditions of permits, "including schedules of compliance, where necessary." "Schedule of compliance" is defined in O.R.C. Section 6111.01(K) to be a:

[S]chedule of remedial measures including an enforceable sequence of actions or operations leading to compliance with standards and regulations adopted under sections 6111.041 and 6111.042 of the Revised Code or compliance with terms and conditions of permits set under division (J) of section 6111.03 of the Revised Code.

Regulation EP-31-04(A)(3) sets forth the authority of the Director to set a satisfactory schedule of compliance as a condition of the permit in those cases determined by the Director to necessitate such measures.

The State of Ohio possesses the authority to set and revise schedules of compliances in those instances where no federal schedule of compliance has been promulgated. O.R.C. Section 6111.03(J) provides that the Ohio program shall comply with the mandatory regulations set forth by the EPA. The EPA has promulgated in 40 C.F.R. §124.44(a)(2) a requirement that:

- (1) The secretary of the army determines in writing that anchorage or navigation would be substantially impaired thereby;
- (2) The director determines that the proposed discharge or source would conflict with an area wide waste treatment management plan adopted in accordance with Section 208 of the "Federal Water Pollution Control Act Amendments of 1972," . . . .
- (3) The administrator of the United States environmental protection agency objects in writing to the issuance or renewal of a permit in accordance with Section 402(d) of the "Federal Water Pollution Control Act Amendments of 1972," 86 Stat. 880, 33 U.S.C.A. 1342(d); or
- (4) The application is for the discharge of any radiological, chemical, or biological warfare agent, or high-level radioactive waste into the waters of the United States.

The requirement that permits be denied in this situation is reflected in

Regulation EP-31-04(A)(2) of the OEPA regulations.

4. Authority to Limit Duration of Permits.

State law provides authority to limit the duration of permits to a fixed term not exceeding five years.

[Federal Authority: FWPCA §402(b)(1)(B); 40 C.F.R. §124.51.]

State Statutory and Regulatory Authority:

O.R.C. Section 6111.03(J)

Regulation EP-31-09

Remarks of the Attorney General:

O.R.C. Section 6111.03(J) states that "[a] permit may be issued for a period not to exceed five years . . . ." This requirement is echoed in Regulation EP-31-09. A permit may be renewed upon application and upon a finding by the Director that "the permit holder is making satisfactory progress towards the achievement of all applicable standards and has complied with the terms and conditions of the existing permit."

308(a), 402(b)(2), and 402(b)(9); 40 C.F.R.  
§§ 124.45(c), 124.61-63, and 124.73(d).]

State Statutory and Regulatory Authority:

O.R.C. Section 6111.03(G)  
O.R.C. Section 6111.03(J)  
O.R.C. Section 6111.03(O)  
O.R.C. Section 6111.05

Regulation EP-31-05

Remarks of the Attorney General:

Chapter 6111. of the Ohio Revised Code provides adequate authority to assure that recording, reporting, monitoring, entry, inspection, and sampling provisions, as required by the FWPCA, be applied by the State to holders of NPDES permits.

O.R.C. Section 6111.03 permits the Director of the Ohio EPA  
to:

(G) Adopt, modify, and repeal regulations in accordance with Chapter 119. of the Revised Code governing the procedure for hearings, filing of reports, the issuance of permits, the issuance of industrial water pollution control certificates and all other, matters relating to procedure; (emphasis added.)

. . . . .  
(J) . . . The director shall specify in such permits that the permit is conditioned upon the right of his authorized representatives to enter upon the premises of a person to whom a permit has been issued for the purpose of determining compliance with sections 6111.01 to 6111.08 of the Revised Code, rules adopted thereunder, or the terms and conditions of a permit, order, or other determination . . . . The director may

EPA to promulgate regulations which provide for the establishment and maintenance of records, reporting, and providing such other information as may be required. The Director of the Ohio EPA may order industrial users of publicly owned treatment works to provide the information required by authority 5.(a) of the General Instructions pursuant to O.R.C. Section 6111.03(O). Industrial users of publicly owned treatment works are subject to the maintenance of records and allowing the copying of such records upon the action of the Director pursuant to O.R.C. Section 6111.05. The same section provides authorization required by authority 5. (1), (3) and (4) of permit holders or industrial users of publicly owned treatment works upon action of the Director or his authorized representatives. Pursuant to O.R.C. Section 6111.03(J), permits may be specifically conditioned upon (1) the establishment and maintenance of records, (2) the installation and use of monitoring equipment, and (3) the right of entry into the premises of a permittee or an industrial user of publicly owned treatment works.

Regulation EP-31-05 requires monthly and annual reports by permit holders and reports of new introductions of pollutants by publicly owned treatment works. The Director may require monitoring and annual submission of reports of monitoring results. The Director or his authorized representative may, pursuant to Regulation EP-31-05, enter the permittee's premises to copy required records, inspect monitoring equipment, or sample the discharge.

of new introductions of industrial waste or other wastes and substantial changes in volume or character thereof being introduced into such systems or works from "industrial users" as defined in section 502 of such act, as necessary to comply with section 402(b)(8) of such act.

This requirement is reflected in Regulation EP-31-05(A)(10). The notice of new introduction of pollutants is to include information on the quality and quantity of such pollutants.

A municipal permittee will have adequate authority to carry out the reporting duties imposed by Section 402(b)(8) of the FWPCA with the aid of the State pursuant to the authority given to the OEPA in O.R.C. Section 6111.03(O) and O.R.C. Section 6111.05, as set forth under authority 5 above.

7. Authority to Insure Compliance by Industrial Users with Sections 204(b), 307, and 308.

State law provides authority to insure that any industrial user of a publicly owned treatment works will comply with FWPCA requirements concerning:

- a. User charges and recovery of construction costs pursuant to Section 204(b);
- b. Toxic pollutant effluent standards and pretreatment standards pursuant to Section 307; and
- c. Inspection, monitoring and entry pursuant to Section 308.  
[Federal Authority: FWPCA §402(b)(9); 40 C.F.R. §124.45(e).]

Authority for the State to monitor discharges by industrial users into publicly owned treatment works is set forth in O.R.C. Section 6111.03(O) and notice of the introduction of pollutants into publicly owned treatment works is required by O.R.C. Section 6111.03(J).

A person who violates or fails to perform a duty imposed by O.R.C. Section 6111.03(J) or O.R.C. Section 6111.03(L) is subject to civil penalties pursuant to O.R.C. Section 6111.09 and criminal penalties pursuant to O.R.C. Section 6111.99. These sections in relevant parts, together with the prohibitive section, state:

Section 6111.07:

(A) No person shall violate or fail to perform any duty imposed by sections 6111.01 to 6111.08 of the Revised Code, or violate any order, regulation, or term or condition of a permit issued by the director of environmental protection pursuant to such sections . . . .

Section 6111.09:

The attorney general, upon written request by the director of environmental protection, shall commence an action under this section against any person who violates section 6111.04, 6111.042, 6111.05, or division (A) of section 6111.07 of the Revised Code. Any action under this section is a civil action.

. . . .

Function 8(b): FWPCA §§ 402(b)(4) (notices and permit applications to EPA), 402(b)(6) (notices and fact sheets to Army Corps of Engineers); 40 C.F.R. §§ 124.22 (receipt and use of Federal data), 124.23 (transmission of data to EPA), 124.34 (notice to other government agencies), 124.46 (transmission of proposed permits to EPA), 124.47 (transmission of issued permits to EPA).

Function 8(c): FWPCA §402(b)(3) (opportunity for public hearing); 40 C.F.R. §§ 124.36 (public hearings), 124.37 (notice of public hearings.)

State Statutory and Regulatory Authority

O.R.C. Section 6111.03(P)

Regulation EP-40-05(A)

Regulation EP-40-07

Regulation EP-40-08

Regulation EP-40-06

Regulation EP-40-10(B)

Regulation EP-40-09

Regulation EP-40-12(A), (B)

Regulation EP-40-08(B)

Regulation EP-40-07

Remarks of the Attorney General:

The State of Ohio has the authority to promulgate regulations which comply with the requirements of the FWPCA and EPA Guidelines for public participation in the NPDES permit program. O.R.C. Section 6111.03(P), authorizes the Director of the Ohio EPA to exercise all incidental power necessary to carry out the purposes of these sections by providing:

The public notice required of every complete application for an NPDES permit, as set forth in 40 C.F.R. §124.32, is provided in Regulations EP-40-07(A) and EP-40-08(A). These regulations assure that notice is circulated in the geographical area of the discharge and among those people who have requested notice or who are on a mailing list to receive copies of notices. The public notice allows a period of 30 days for the submission of written views by interested persons on the proposed action and provides pertinent information concerning the Agency and the proposed action.

In accord with all the requirements of 40 C.F.R. §124.33, Regulation EP-40-06(A) requires that the Agency prepare a fact sheet for those discharges which have a total volume of more than 500,000 gallons on any day. The fact sheets include:

- (1) a sketch or detailed description of the location of the discharge described in the application;
- (2) a quantitative description of the discharge described in the application;
- (3) the proposed action of the director including the terms, specifications, conditions, and limitations of a proposed permit;



- (3) public health agencies.

Fact sheets for major discharges are also transmitted to the appropriate District Engineer of the Army Corps of Engineers in accordance with Regulation EP-40-10(B).

The public notice which must be sent to these various entities shall include, pursuant to Regulation EP-40-09(A):

- (1) the information required for public notice  
and may include a copy of such public notice;
- (2) a statement that such state or agency may  
submit written recommendations to the  
Director and to the Regional Administrator.  
Such recommendation will be incorporated  
into the final action or a written explanation  
will be given; and
- (3) a copy of the fact sheet and an offer to supply  
a copy of the permit application, proposed  
permit, and ancillary papers upon request.

In administering the NPDES program pursuant to authorization by the EPA, the OEPA will be bound by conditions of the agreement negotiated as a condition precedent to such authorization. Accordingly, data will be forwarded to comply with the authority required by 8(a) and 8(b). However, the OEPA has promulgated regulations which cover the functions of 8(a).

(3) Any information obtained pursuant to any monitoring, recording, reporting or sampling requirements or as a result of sampling or other investigatory activities of the State.

- b. The State may hold confidential any information (except effluent data) shown by any person to be information which, if made public, would divulge methods or processes entitled to protection as trade secrets of such person. [Federal Authority: FWPCA §§ 304(h)(2)(B), 308(b), 402(b)(2) and 402(j); 40 C.F.R. §124.35.]

State Statutory and Regulatory Authority:

O.R.C. Section 6111.05

Regulation EP-40-07

Regulation EP-40-08

Remarks of the Attorney General:

Authority exists to require that information be made available to the public, consistent with requirements of the FWPCA and 40 C.F.R. §124.35. O.R.C. Section 6111.05 provides for the protection of confidential information, excluding effluent data, which is shown by any person to be entitled to protection as trade secrets. O.R.C. Section 6111.05 states, inter alia:

. . . Any records, reports, or information obtained under Chapter 6111. of the Revised Code shall be available for public inspection, except that:

(A) Upon a showing satisfactory to the director of environmental protection by any person that such records, reports, or information, or any particular part thereof, other than data concerning the amounts or contents of discharges or the quality of the receiving waters, to which

public notice of all applications for issuance, modification, or renewal of permits, proposed actions, public meetings, and adjudication hearings. Regulation EP-40-08(A) (1) requires public notice of proposed actions for issuance or renewal of a permit, including:

(1) The name of the Agency and the addresss and telephone number of the facilities where Agency files and records pertaining to the application are located and may be inspected and copied, and instructions for persons desiring to obtain additional information or a copy of any fact sheet prepared or of the proposed permit; and instructions to persons desiring to be included on a mailing list provided for in EP-40-06(B).

O.R.C. Section 6111.03(J) requires that the Director issue permits which are in compliance with the requirements of the FWPCA and mandatory regulations adopted thereunder. 40 C.F.R. §124.35(a) requires a state agency to make available public comments; and the Director may also make available other information obtained by the agency pursuant to its participation in the NPDES permit program. The records, reports, or information required by O.R.C. Section 6111.05 to be made available for public inspection, include public comments concerning the permit application and, at the Director's discretion, other information which has been obtained by the Agency.

permit, O.R.C. Section 6111.03(J), as quoted above, allows the modification or termination of the permit where any of these permit conditions are violated. The opportunity for a public hearing on the modification, suspension, or revocation of a permit, as required by 40 C.F.R. §124.72(a), is satisfied by Regulation EP-40-07(A).

11. Authority to Abate Violations of Permits or the Permit Program.

State law provides authority to:

a. Abate violations of:

- (1) Requirements to obtain permits;
- (2) Terms and conditions of issued permits;
- (3) Effluent standards and limitations and water quality standards (including toxic effluent standards and pretreatment standards applicable to dischargers into publicly owned treatment works); and
- (4) Requirements for recording, reporting, monitoring, entry, inspection, and sampling.

b. Apply sanctions to enforce violations described in paragraph (a) above, including the following:

- (1) Injunctive relief, without the necessity of a prior revocation of the permit;
- (2) Civil penalties;
- (3) Criminal fines for willful and negligent violations; and
- (4) Criminal fines against persons who knowingly make any false statement, representation or certification in any form, notice, report, or other document required by the terms or conditions of any permit or otherwise required by the State as part of a recording, reporting, or monitoring requirement;

Section 6111.07(B) directs the Attorney General, upon written request of the Director of the Environmental Protection Agency, to:

. . . bring an action for an injunction against any person violating or threatening to violate such sections, or violating or threatening to violate any order, regulation, or condition of a permit issued by the director pursuant to such sections. In an action for injunction to enforce any final order of the director brought pursuant to this section, the finding by the director, after hearing, is prima-facie evidence of the facts found therein.

The power to seek an injunction applies to Sections 6111.01 to 6111.08 of the Revised Code. The permit need not be revoked before seeking injunctive relief.

Civil penalties are imposed by O.R.C. Section 6111.09, which states:

Any person who violates section 6111.04, 6111.042, 6111.05, or division (A) of section 6111.07 of the Revised Code shall pay a civil penalty of not more than ten thousand dollars . . . . The attorney general, upon written request by the director of environmental protection, shall commence an action under this section against any person who violates sections 6111.04, 6111.042, 6111.05, or division (A) of section 6111.07 of the Revised Code. Any action under this section is a civil action . . . .

Criminal sanctions are imposed on violators by O.R.C. Section 6111.99 which states:

There is no minimum criminal fine imposed by Chapter 6111. of the Revised Code, as is imposed in the FWPCA, but provision is made for imprisonment for periods up to one year by O.R.C. Section 6111.99(A) for most violations. (Section quoted above.)

## 12. State Board Membership

No State board or body which has or shares authority to approve permit applications or portions thereof, either in the first instance or on appeal, includes [or will include, at the time of approval of the State permit program], as a member, any person who receives, or has during the previous two years received, a significant portion of his income directly or indirectly from permit holders or applicants for a permit. No State law requires representation on the State board or body which has or shares authority to issue permits which would violate the conflict of interest provision contained in Section 304(h)(2) of the FWPCA.

[Federal Authority: FWPCA §304(h)(2)(D); 40 C.F.R. §124.94.]

### State Statutory and Regulatory Authority:

O.R.C. Section 121.03(A)

O.R.C. Section 3745.02

### Remarks of the Attorney General:

O.R.C. Section 121.03(A) provides for the appointment of the Director of the Ohio Environmental Protection Agency by the Governor, with the advice and consent of the Senate. The Director holds his office during the term of the appointing governor, but is subject to removal at the pleasure of the governor.

The composition of the Environmental Board of Review, an administrative appeal board, consists of:

. . . three members appointed by the governor with the advice and consent of the senate for terms of six years, except that the terms of the first members of the board shall be for two, four, and six years, respectively, as designated by the governor at the time of the appointment. Any vacancy in the office of a member of the board shall be filled by appointment by the governor for the unexpired term of the member whose office will be vacant. . . . Each member shall have extensive experience in pollution control and abatement technology, ecology, public health, environmental law, economics of natural resource development, or related fields. At least one member shall be an attorney. No more than two members shall be of the same political party. Each member shall serve full time. O.R.C. Section 3745.02.

The Director or the members of the Environmental Board of Review need not be represented by individuals who would violate Section 304(h)(2) of the FWPCA. Based on affidavits solicited from members of the Environmental Board of Review and the Director and correspondence with John R. Quarles, Jr., as attached, I find that the members of the Environmental Board of Review and the Director of the Ohio Environmental Protection Agency do not appear to have financial interests which are incompatible with 40 C.F.R. Section 124.94 promulgated pursuant to the FWPCA.

All necessary statutory and regulatory authority has been cited to support the OEPA "Program Description".

Certified on this 17th day of December, A.D., 1973  
in the City of Columbus, State of Ohio.

William J. Brown

WILLIAM J. BROWN

Attorney General, State of Ohio

Attachments for Attorney General's Statement

Certification Correlation Sheet

S.B. 80 (Appendix 3.2)

ORC Chapter 1509 (Appendix 3.6)

ORC Section 121.03(A) (Appendix 3.1)

ORC Section 3745.02 (Appendix 3.1)

EP-31 Ohio NPDES Permit (Appendix 3.4)

EP-40 Rules of Procedure (Appendix 3.4)

Affidavits



ATTORNEY GENERAL'S  
CERTIFICATION CORRELATION SHEET

FEDERAL REQUIREMENTS

OHIO STATUTE AND REGULATION

Authority 1.

- a. Issue permits to new and existing point sources

O.R.C. Section 6111.03(J) at p. 6  
O.R.C. Section 6111.03(P) at p. 13  
O.R.C. Section 6111.04 at p. 14-15  
O.R.C. Section 6111.01 at p. 2-3  
EP-31-02

- b. Issue permits to control disposal of pollutants into wells

O.R.C. Section 6111.03(J) at p. 6  
O.R.C. Section 6111.01(H) at p. 3  
O.R.C. Section 6111.04 at p. 16  
O.R.C. Section 6111.04 at p. 14-15

Authority 2.

- a. Apply applicable Federal effluent standards and limitations and water quality standards

O.R.C. Section 6111.03(J) at p. 7  
O.R.C. Section 6111.042 at p. 19  
EP-31-04(B)  
EP-31-01(D)

- (1) Effluent limitations pursuant to Section 301

O.R.C. Section 6111.03(J) at p. 7 and p. 8

- (2) Water quality related effluent limitations pursuant to Section 302

O.R.C. Section 6111.03(J) at p. 8

- (3) National standards of performance pursuant to Section 306

O.R.C. Section 6111.03(J) at p. 7

- (4) Toxic and pretreatment effluent standards pursuant to Section 307

O.R.C. Section 6111.03(J) at p. 7

Authority 7.

Authority to insure compliance  
by industrial users with Sections  
204(b), 307, and 308

O.R.C. Section 6111.03(L) at p. 11  
O.R.C. Section 6111.03(J) at p. 7  
O.R.C. Section 6111.07 at p. 21  
O.R.C. Section 6111.09 at p. 22  
O.R.C. Section 6111.99 at p. 23

Authority 8.

Authority to issue notices, trans-  
mit data, and provide opportunity  
for public hearings

O.R.C. Section 6111.03(P) at p. 13

Section 124.31. Tentative deter-  
minations and draft permits.

- a. proposed actions
  - (1) proposal to issue or deny
  - (2) if proposal to issue:
    - (i) effluent limitations
    - (ii) compliance schedule
    - (iii) other conditions

EP-40-05(A)  
EP-40-05(A)

O.R.C. Section 6111.03(J) at p. 7-8

Section 124.32. Public notice.

- a. public notice of complete  
application
  - (1) circulation may include:
    - (i) N/A
    - (ii) publication in news-  
papers
  - (2) mailed upon request
  - (3) mailing list

EP-40-07(A)(1)  
EP-40-07(A)(3)  
EP-40-07(A)(2); O.R.C. Section 3745

- b. 30 day public comment  
period  
comments retained by  
director

EP-40-08(A)(6)(b)  
EP-40-04(A)(4); EP-40-05(B)

specific request for fact sheet.

EP-40-06 (B) (1)

Agencies shall include:

(1) those under Section 208 (b)

EP-40-09 (B) (1)

FWPCA

(2) Section 303 (e) agencies

" (B) (2)

e. public health agencies

EP-40-09 (B) (3)

Section 124.35. Public access to  
information

a. public health agencies

EP-40-04 (A) (5)

b. trade secrets

c. disclosure of confidential  
information to the Regional  
Administration

d. copying facilities

EP-40-20 (B)

Section 124.36. Public Hearings

EP-40-12

Section 124.37. Public notice of  
public hearings

a. public notice of public hearings

EP-40-07 (A)

(1) publication in a newspaper

" (A) (1)

(2) to whom mailed

" (A) (b) (5)

(3) mailed upon request

" (A) (3)

(4) shall be effected 30 days  
in advance

EP-40-07 (c)

b. notice shall contain:

EP-40-08 (B)

(1) name, address of agency

" (B) (1)

(2) name, address of applicant

" (B) (2)

(3) location of discharge

" (B) (3)

(4) reference to public notice  
of application

" (B) (4)

(5) time and place of hearing

" (B) (5)

(6) purpose of the hearing

" (B) (8)

(7) statement of issues

" (B) (6)

(8) where information may be  
obtained

" (B) (1)

(9) nature and procedure of

" (B) (7)

Section 124.46. Proposed Permit Trans-  
mitted to Regional  
Administration

EP-40-10-(A) (1)